Petition

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NO.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1981

KURT ROSENBAUM,
Respondent

-vs-

JEAN ROSENBAUM,
Petitioner,
acting Pro Se

ON PETITION FOR WRIT OF CERTIORARI TO THE

APPELLATE COURT OF ILLINOIS

First District

PETITION FOR WRIT OF CERTIORARI

JEAN ROSENBAUM, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

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PETITION FOR WRIT OF CERTIORARI

JEAN ROSENBAUM, Petitioner, acting Pro Se, herein prays that a Writ of Certiorari issue to review the Opinion and Judgment of the Appellate Court of Illinois, First District, at Chicago Illi-

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NOTE: In the Courts below, the Petitioner was Defendant-Appellant; the Respondent was Plaintiff-Appellee.

nois, entered in this proceeding on March 17, 1981, as well as the denial of Petitioner's timely-filed Petition for Rehearing in the Order entered April 9, 1981. Petitioner's timely-filed Petition for Leave to Appeal to the Supreme Court of Illinois was denied by that Court in its Order entered October 19, 1981.

QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioner is entitled to receive a Court Order stating that it is the intention of the Court that she receive the Federal Income Tax deduction for property taxes on the family home she was required by the Court to repay to her legal husband, the Respondent, by the Decree for Partition and Sale, and whether she is entitled to a deduction for more than one-half of these property taxes she repaid to him?

2. Whether Petitioner is entitled to receive from Louis Kontopoulos, purchaser of the family-home premises at the Court-ordered partition sale, her United States mail retain by him and/or destroyed because of his negligence, or suitable compensation therefor?

3. Whether Petitioner is entitled to and should receive the benefits of a permanent, Court-ordered injunction to restrain her husband, the Respondent, from filing any more harassing divorce suits against her on grounds of mental and/or physical cruelty?

PARTIES TO THE PROCEEDING

(See Footnote below.) *

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* In addition to the parties named in the caption, Louis Kontopoulos from Star Realty Company, 5116 North Lincoln Avenue, Chicago, Illinois, purchaser of the family home at the Court-ordered partition sale, has acted as an additional Plaintiff, although he did not comply with Ill. Rev.

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Stat. (1975-1981), Ch. 110, Par. 25, 26, 26.1 and 26.2 on joinder of parties and interpleading. This issue was consistently pleaded by Petitioner throughout the case in the lower Courts. Mr. Kontopoufiled a Brief in Appellate Court, although in the previous appeal, he was refused standing without explanation.

TABLE OF AUTHORITIES Page No.

Cases

Brooklyn Savings Bank v. O'Neil
324 U. S. 697 21,24

Carlson v. Curtiss, 234 U. S. 103. 21

Clinton v. U. S. (9th Cir. 1961)
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Meredith v. John Deere Plow Company of Moline, Illinois (8th Cir. 1958, cert. den. 359 U. S. 909, 1959) 261 F. 2d 121 23

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CONSTITUTIONAL PROVISIONS INVOLVED

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OPINION BELOW

The Opinion of the Appellate Court of Illinois, First District, Second Division is reported as Rosenbaum v. Rosenbaum, 94 Ill. App. 3d 352, and Petitioner knows of no other printing in unofficial reports.

JURISDICTION

The Opinion of the Appellate Court of Illinois, First District, for which review is sought, is dated and was entered, March 17, 1981. Petitioner's timely-filed Petition for Rehearing was denied by the Appellate Court Order dated April 9, 1981;

it was entered that day. In an Order dated and entered October 19, 1981, the Supreme Court of Illinois denied Petitioner's Petition for Leave to Appeal.

The jurisdiction of this Court to review this cause is invoked under 28 U. S. C. A. §1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

The provisions of the United States Constitution involved are quoted following:

> Amendment V. "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

> Amendment XIV, Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction

thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

FEDERAL STATUTES INVOLVED

The Federal Statutes involved are quoted following:

18 USCA §1705. "Whoever willfully or maliciously injures, tears down or destroys any letter box or other receptacle intended or used for the receipt or delivery of mail on any mail route, or breaks open the same, or willfully or maliciously injures, defaces or destroys any mail deposited therein, shall be fined not more than $1,000 or imprisoned not more than three years."

18 USCA §1708. "Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route, or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag or

mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or

Whoever steals, takes, or abstracts, or by fraud or deception obtains any letter, postal card, package, bag, or mail, or any article or thing contained therein which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or

Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted --

Shall be fined not more than $2,000 or imprisoned not more than five years, or both."

26 USCA §164 (a). "(a) General rule - Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued: (1) State and local, and foreign, real property taxes."

26 USCA §6501 (a). "(a) General Rule. -- Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after

such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period."

28 USCA §1651. "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

STATEMENT OF THE CASE

The family home where Petitioner lived with their children after her husband's desertion, was sold at a Court-ordered partition sale instituted by husband, Kurt Rosenbaum. (The couple is not legally separated or divorced.) The house was purchased by Louis Kontopoulos, a realtor, who had Petitioner forcibly evicted as she awaited an Illinois Supreme Court Order on the supersedeas issue. Certain items of her personal property were overlooked by the Sheriff's crew, and Mr. Kontopoulos consistently refused to

release them to her; some could be seen through the window from outside. Forced to change her abode suddenly, Petitioner immediately informed the United States Post Office to forward her mail, and continued to do so when her address changed again. A large amount of mail was not forthcoming, and she returned to the unoccupied home where she had frequently seen Mr. Kontopoulos. The mail drop led to the garage, and through the garage window could be seen a a 2-3 feet high heap of mail. She quickly telephoned Mr. Kontopoulos, who worked nearby, and asked him to release the mail to her at once. He rudely told her to call in a few days and hung up. When she returned in a few days, due to sudden cold weather, a water pipe above the garage had burst, and a 3-4 foot wide icicle from the ceiling covered her mail. Petitioner at once called Mr. Kontopoulos, asked him to save every shred

for her when the icicle melted, and repeated this request in a letter, a copy of which was sent to the Second Division of the Appellate Court. About 2-3 months later, she received only 8-10 pieces of mail from Mr. Kontopoulos by mail. She returned to the home -- the garage door was open, and within found several other mail-pieces dated weeks before, but the large heap had disappeared. Petitioner returned to trial court; Mr. Kontopoulos did not appear, and the Court entered an Order requiring the purchaser to return her personal property and mail. Mr. Kontopoulos scheduled another appearance, and claimed he knew nothing of the personal property or mail. Trial court then vacated its Order as it pertained to Mr. Kontopoulos. Petitioner appealed the issue in Appellate Court, and its Opinion overlooks the mail issue; the Court denied her Peti-

tion for Rehearing, where the overlooked issues were discussed.

When the Decree for Partition and Sale was entered on the jointly-owned home, it required that prior to distribution of sale proceeds, Kurt Rosenbaum should be repaid $10,692.60 for real estate taxes he had paid on the house when the wife and/or children lived there. The Federal Internal Revenue Service later informed wife that as she had repaid the taxes to her husband, and not to the Federal Government, she could take no Federal Income Tax deduction for the large amount. She asked the Court, then, to express its intent in a Court Order that she should get the tax deduction for her share of the tax repayment (she also claimed that her husband had paid the taxes with funds that were one-half hers). The Court denied this request, and after the appeal was initiated, she took a tax deduction for a-

bout $5,000, one-half the amount, which the Internal Revenue Service did not question. She so informed Appellate Court, and its Opinion decided the issue is moot. However, the Internal Revenue Service has 3 years in which to audit the return (or even longer under some circumstances), and the time has not expired. Petitioner considers the issue far from fully decided, or moot.

Petitioner requested Appellate Court, which has jurisdiction to finalize matters, to issue a permanent injunction to restrain her husband from filing any more divorce suits against her on grounds of mental and physical cruelty. He has lost two such suits in the past years, and is unable to prove his lack of provocation. The last suit was initiated with the partition action in 1972, and in 1976 the divorce portion was dismissed after a lengthy, costly appeal

for which Petitioner received practically no reimbursement. Portions of this suit are still not fully resolved, being encompassed by the instant Petition for a Writ of Certiorari. Appellate Court also overlooked this issue, refusing to rule on it. Respondent filed his third divorce suit against Petitioner using grounds of mental cruelty, on September 25, 1981, No. 81 D 22050, before the instant Petition involving some of the issues in the second divorce suit is even due.

RAISING THE FEDERAL QUESTION

The Federal questions were raised at the first logical opportunity in trial court in a timely fashion. In Appellate Court they were substantiated with appropriate Federal law. Upon remand after the second appeal, on December 18, 1979, Petitioner filed a Motion regarding the return

of personal property, and in an Amendment thereto, on December 26, 1979, asked for the return of her U. S. mail from Louis Kontopoulos. On December 26, 1979, trial court entered an Order (R. C.33) which, in part, states --

> "IT IS HEREBY ORDERED:
> (1) Jean Rosenbaum is granted leave to file the Instanter Amendment to Defendant's Motion dated December 18, 1979;
> (2) Louis Kontopoulos is ordered to return to Jean Rosenbaum her living room drapes, certain hardware, consisting of brass drape rods, knobs, ceiling hook, etc., and whatever of her personal property remains on the premises at 2841 West Gregory Street, Chicago, Illinois, and all mail directed to her which may be in his possession."

On January 24, 1980 (R. C.54) Petitioner's Motion asserted her rights under United States Constitution, Amendment V and Amendment XIV. On January 24, 1980, also, trial court, at the request of Mr. Kontopoulos, through his attorney, Christ Marinakis, entered a new Order (R. C.63):

"This cause coming on to be heard on the motion of Louis Kontopoulos to vacate the order of December 26, 1979,
IT IS HEREBY ORDERED AS FOLLOWS:
That the Court vacates the Order of December 26, 1979, as it pertains to Louis Kontopoulos, and said Order is held for naught as to Louis Kontopoulos."

The Opinion in Rosenbaum v. Rosenbaum, 94 Ill, App. 3d 352, 353, states:

"Much of the evidence presented by defendant was hearsay. Only two witnesses appeared before the court: herself and Kontopoulos.

The Opinion overlooks the "mail" issue, indirectly refusing to rule on it. The Appellate Brief of Petitioner contains the issue on pages 9-11, and her Petition of Rehearing reiterates it on pages 2-4 thereof.

In a Motion heard February 8, 1980, Petitioner requested trial court to enter an Order specifically stating its intent she is to be awarded the income tax deduction for property taxes repaid by her to Kurt Rosenbaum per Court Order, (R. C.69), and in Par. 5 of this Motion she states --

> "That this request is being made to substantiate Jean Rosenbaum's right to due process and equal protection of the laws as granted under the United States Constitution, Amendments V and XIV."

(See R. C.70). The trial court Order dated February 8, 1980, states in part (R. C.72):

> ".....IT IS ORDERED (1) That Defendant, JEAN ROSENBAUM's Motion be and the same is hereby denied."

The Appellate Opinion, Rosenbaum v. Rosenbaum, 94 Ill. App. 3d 352, 356, determined the question is moot and academic.

On February 14, 1980, Jean Rosenbaum filed her Affidavit on the income tax issue (R. C.75-77), and her Notice of Appeal filed in trial court again asserted her rights under the U. S. Constitution, Amendment V and Amendment XIV as to all issues and Orders (R. C.80). These Federal issues and rights were again asserted in her Motion filed February 21, 1980 (R. C.87-88).

Petitioner's request for a permanent injunction to prevent her husband, Kurt Rosenbaum, from filing further harassing divorce suits against her, was first raised in her Reply Brief of Defendant, Jean Rosenbaum, Reply to Brief of Kurt Rosenbaum, on pages 10-11 thereof, and was reiterated in her Petition for Rehearing, page 1, and pages 4-7. Both documents were filed in Appellate Court, and that Court overlooked the issue, in effect declining to rule on it. Amendment I, U. S. Constitution, applies.

REASONS FOR ALLOWING THE WRIT

The protection of mail under United States postal regulations is a vital and important issue, and the security of this

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NOTE: Family relatives of Petitioner living in distant States died during the "loss of mail" period, and an inheritance may be involved, and notification thereof, information she is otherwise unable to get without costly travel.

country and its citizens is involved. Mail is protected by Federal law, of which Mr. Kontopoulos, a native of another country, has been contemptuous. There is a penalty of $1,000 and possible imprisonment for willful destruction of mail (Petitioner did not even receive shreds of the bulk of her mail), 18 USCA §1705. Under 18 USCA §1708, the penalty for abstracting mail from a mail receptacle is a fine not more than $2,000, or imprisonment for not more than 5 years. U. S. v. Lavin, 567 F. 2d 579, 581 determined that postal matter remains mail until it is returned to the sender or delivered to the person to whom it is addressed. In U. S. v. Johnson, 620 F. 2d 413, 415, it was determined the school superintendent was guilty of knowingly obstructing and retarding mail because he kept a postcard overnight and made copies of it. "The

offense of obstructing passage of mail consists of obstructing or retarding passage of mail knowingly and willingly," U. S. v. Hall, 507 F. Supp. 242, 244. The buyer had Petitioner's mail under his control for weeks and even months, without any effort on his part to return it, although his attorney had Petitioner's address, and Petitioner is entitled to damages. The Appellate Court refused to rule on the issue by overlooking it. A state court cannot deprive a litigant of a federal right by omitting to pass upon basic questions of fact; in that situation, the Supreme Court will examine the record itself ....., Brooklyn Savings Bank v. O'Neil, 324 U. S. 697, 703; Carlson v. Curtiss, 234 U. S. 103, 105, 106.

Evidence of the position of the U. S. Internal Revenue Service with regard to the income tax deduction is presented in the Appendix hereto, page 36. It is only just

that if Petitioner is required to repay thousands of dollars in property taxes to Respondent, although he never expressed that intent to her when he paid the taxes, she should get the deduction on her income tax return therefor (the Illinois Income Tax Return depends on the Federal Income Tax Return; it is proper a Court Order should issue to strengthen her position with the taxing body. This issue is of vital importance to the general public, particularly with the high divorce rate and related matters. It is of sufficient importance to merit the attention of this Court.

Respondent refuses to support his wife of 33 years, and additionally has used up her earnings since she has worked, with his harassing Court actions. Apparently he intends to continue this policy, as his new

suit, filed September 25, 1981, before Petitioner's time for appeal to this Court had expired, reveals. Petitioner is now 60 years old, and in questionable health; Respondent will soon be 69 years old, and has suffered emotional disturbance in the past. Since 1967, Petitioner has been harassed with unwanted Court suits by Respondent, and she and her three children (also Respondent's children) have been harmed irreparably therefrom. Clinton v. U. S., 297 F. 2d 899, 901-902 (1961) stated:

> "The subjecting of another to repeated, baseless and vexatious suits on some particular subject matter is sufficient ground for issuance of an injunction against the perpetrator."

The foregoing citation, as well as the similar decision in Meredith v. John Deere Plow Company of Moline, Ill., 261 F. 2d 121, 124, (1958) cert. den. 359 U. S. 909, 1959) is justified under 28 USCA §1651. The Appellate Court did not rule on the issue.

Brooklyn Savings Bank v. O'Neil, 324 U. S. 697, 703 determined --

> "Where a state court fails to pass on evidence or make findings of fact because under their respective views the facts referred to are immaterial, we are not relieved from the duty of examining the evidence for the purpose of determining what facts reasonably might be and presumably would be found therefrom by the state court."

Petitioner should be entitled to the consideration of the Courts, both State and Federal, on this issue which, she believes, merits the granting of the Petition for Writ of Certiorari. The permanent injunction is required to restrain Respondent, whose judgment frequently shows evidence of impairment, from further injuring his wife and children with harassing Court action.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to the Appellate

Court of Illinois, First District.

Respectfully submitted,

Dated:

JEAN ROSENBAUM, Petitioner,
acting Pro Se *

STATE OF ILLINOIS)
COUNTY OF C O O K) SS

AFFIDAVIT

I, JEAN ROSENBAUM, being first duly sworn upon oath, depose and state I am the Petitioner, acting Pro Se, in the aforestated cause, that I have read the foregoing ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, First District, by me subscribed, that I know the contents thereof, and the same is true in substance and in fact, including the the Appendix attached thereto.

Dated:

JEAN ROSENBAUM *

I, _____, a Notary

Public, for and in the State of Illinois, County of Cook, do hereby certify that the foregoing document, ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, First District, was sworn and subscribed to before me by Jean Rosenbaum this 15th day of January, 1982.

_____
Notary Public *

My commission expires: _____

* See copy marked "Notarized Copy" for signatures.

Jean Rosenbaum
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

OPINION

KURT ROSENBAUM, Plaintiff-Appellee

-vs-

JEAN ROSENBAUM, Defendant-Appellant, acting Pro Se

94 Ill. App. 3d 352

Appellate Court of Illinois, 1st District
Opinion filed March 17, 1981

Mr. PRESIDING JUSTICE HARTMAN delivered the opinion of the court:

This is the third appeal of this cause by Jean Rosenbaum (defendant). In the first appeal, the court reversed a divorce decree granted to Dr. Kurt Rosenbaum (plaintiff), and declared a partition judgment invalid. The divorce action was remanded with instructions to dismiss. The partition action was remanded for further proceedings. (*Rosenbaum v. Rosenbaum* (1976), 38 Ill. App. 3d 1, 349 N.E.2d 73.) On remand the trial court, after a hearing, entered another decree for partition and sale. This court affirmed the partition and eviction issues raised in the second appeal, but found that the trial court had improperly apportioned plaintiff's attorney's fees from the sale proceeds of the subject property and remanded the cause, directing the trial court to recalculate the distribution. *Rosenbaum v. Rosenbaum* (1978), 65 Ill. App. 3d 228, 382 N.E.2d 270.

This appeal is taken from the following orders entered by the trial court upon the 1978 remand: denial on January 24, 1980, of defendant's motion for modification of an order entered December 26, 1979, which sought retroactive interest on $1,750 attorney's fees repaid to her on that date; denial on February 8, 1980, of her motion for a court order stating that she is entitled to receive an income tax deduction for real estate taxes repaid to plaintiff; vacatur on January 24, 1980, of the order of December 26, 1979, which had required Louis Kontopoulos, the successful bidder at the public sale of defendant's house, to return to her certain personal property allegedly left in the house; and denial on February 8, 1980, of defendant's motion to add special findings to orders entered January 24, 1980. For the following reasons, we affirm.

On December 26, 1979, the trial court's recalculation awarded plaintiff costs of $90, and excluded from the sale proceeds the $3,500 in attorney's fees which had been disallowed by this court. Defendant was awarded $1,750, representing one-half of the attorney's fees awarded by the decree of partition and sale. The trial court also declared that defendant was not entitled to accrued interest on that sum prior to the

date of entry of the December 26 order, since plaintiff's counsel rather than plaintiff had been in possession of the money. This issue was subsequently reopened by defendant on January 24, 1980, but her motion to modify the December 26 order regarding retroactive interest was denied.

During the December 26 hearing defendant also moved the trial court for the return of certain of her personal property allegedly in the possession of Kontopoulos, and the court ordered Kontopoulos to return the property. Kontopoulos was not represented at the hearing, but he appeared at the January 24, 1980, hearing, and moved the court to vacate the order of December 26, 1979. The trial court first found that Kontopoulos was a party since he had obtained a writ of assistance in these proceedings. Kontopoulos then testified that he was not in possession of any of the property specified by defendant, although the latter testified that on the date of her eviction she could see some of the property from outside the house and "knew" that other property was still there. She also testified that a tenant of Kontopoulos, who lived in the house six to eight months after the eviction, informed her that her property was still there. The trial court, after hearing the testimony, granted Kontopoulos' motion to vacate the December 26 order.

On February 8, 1980, defendant moved the trial court "to enter an order specifically stating that she is to be awarded the income tax deduction for the $10,692.60 in taxes repaid to Kurt Rosenbaum," and further moved that the court add to the two orders entered on January 24, 1980, the special finding "that there is no just reason to delay enforcement of or appeal from this order." Both motions were denied.

•1 We first address defendant's contention that the trial court erred in vacating, on January 24, 1980, its order of December 26, 1979, directing Kontopoulos to return to her certain of her personal property. Defendant both questions Kontopoulos' status as a party and requests relief from this court as to him. No formal appearance was filed for him, yet defendant served Kontopoulos with a notice of motion; he testified at the January 24, 1980, hearing; he was served with a notice of appeal; and he has filed a brief as appellee before this court. The parties, including Kontopoulos, proceeded at the trial court level treating him as though he had been joined formally as a party, and he shall be so considered here. Ill. Rev. Stat. 1979, ch. 110A, par. 366(a)(2); *Brown v. VanKeuren* (1930), 340 Ill. 118, 122, 172 N.E. 1; *Marsh v. Green* (1875), 79 Ill. 385, 387; *In re Sparrow* (1978), 59 Ill. App. 3d 731, 735, 376 N.E.2d 236; *Leffers v. Hayes* (1945), 327 Ill. App. 440, 64 N.E.2d 768.

•2 Next, we consider the trial court's finding that Kontopoulos was not in possession of defendant's property. Much of the evidence presented by defendant was hearsay. Only two witnesses appeared before the court: herself, and Kontopoulos. We will not substitute our judgment as to the credibility of witnesses for that of the trial court, unless the latter's judgment is against the manifest weight of the evidence. (*Haight v. Board of Education* (1975), 29 Ill. App. 3d 48, 329 N.E.2d 442; *Kropp Forge Co. v. Jawitz* (1962), 37 Ill. App. 2d 475, 186 N.E.2d 76.) Such is not the case here. For that reason also, it is not necessary to address defendant's argument that she is entitled to damages from Kontopoulos under the exemption act for withholding property (Ill. Rev. Stat. 1979, ch. 52, pars. 13(c), 15, 17).

•3 Defendant also maintains that the trial court erred in refusing to declare that she is entitled to an income tax deduction for that portion of the real estate taxes repaid to plaintiff which were deducted from her share of the partition proceeds. She contends that such an order of the trial court would be respected and followed by the Internal Revenue Service and the Federal courts. The motion for such a declaration was properly denied. The trial court's order strictly adhered to the appellate court's mandate. When a case is reversed and remanded by a reviewing court with specific instructions, the trial court may only undertake such further proceedings as to conform to those instructions. (*House of Vision, Inc. v. Hiyane* (1969), 42 Ill. 2d 45, 48, 245 N.E.2d 468; *Hornof v. Kroger Co.* (1968), 40 Ill. 2d 545, 240 N.E.2d 658.) Defendant's reliance upon *Moulding-Brouncll Corp. v. E. C. Delfosse Construction Co.* (1940), 304 Ill. App. 491, 26 N.E.2d 709, for the principle that issues not determined by the appellate court may be adjudicated by the trial court upon remand, is, in this regard, misplaced. In that case, a mechanic's lienor alleged that, after the appellate court affirmed the trial court's decree that it possessed a lien on certain property for $5,200, the trial court had no right to determine upon remand the relative priorities of other parties as to the property in order to direct proper distribution of the proceeds of its sale. The court found that such determination by the trial court manifested the obvious purpose of the original decree, and was in accordance with the recognized procedure in such cases. By contrast, in the instant case, this court did not expressly or implicitly authorize the trial court to determine the tax liabilities of the parties, and such a determination is not the usual procedure in a case such as this. Defendant's citation of Supreme Court Rule 369(b) (Ill. Rev. Stat. 1979, ch. 110A, par. 369(b)) is similarly inapposite, since it applies to dismissal or affirmance, whereas in the instant case the cause was remanded with specific directions. *Rosenbaum v. Rosenbaum*, 65 Ill. App. 3d 228, 234.

¶ 4 Further, the question of who should be accorded a tax deduction is not an actual controversy here; rather, defendant admits she has already claimed the deduction and it has been allowed. The question therefore is moot and academic. (See *In re Matter of Creager* (1944), 323 Ill. App. 594, 56 N.E.2d 649.) Any attempts to evaluate such an issue would, at best, call for an advisory opinion. It is, therefore, not reviewable by this court. (*In re Estates of Rice* (1979), 77 Ill. App. 3d 641, 396 N.E.2d 298; *In re Johnson* (1977), 53 Ill. App. 3d 921, 369 N.E.2d 70.) The Illinois public interest exception to the mootness rule (*In re Johnson*), upon which defendant relies, is inapplicable in the instant case, as there is little or no likelihood of future recurrence of the income tax issue, as required to bring it within the exception. *In re Johnson*, 53 Ill. App. 3d 921 925.

¶ 5 Finally, defendant contends that since a judgment was entered September 6, 1977, directing her to pay one-half of plaintiff's counsel's legal fees, and because the appellate court reversed that order and directed that she be repaid, the interest on the sum to which she is entitled should accrue on September 6, 1977, the date of the original judgment, rather than on December 26, 1979, when the trial court directed repayment of her recalculated share of the partition proceeds. She claims support from *Pinkstaff v. Pennsylvania R.R. Co.* (1964), 31 Ill. 2d 518, 202 N.E.2d 512; however, that case merely holds that interest accrues when a judgment is entered. Neither *Pinkstaff* nor *Penn Central Co. v. Chicago, Milwaukee, St. Paul & Pacific R.R. Co.* (7th Cir. 1970), 433 F.2d 943, also cited by her, speaks to the instant situation, wherein a portion of the original judgment was reversed and a new judgment entered on remand following recalculation of the distribution. In such cases, where the exact amount owed is not calculated until the disposition of the case following remandment, interest on the judgment runs from the date of the new decree. (*Presbyterian Distribution Service v. Chicago National Bank* (1962), 36 Ill. App. 2d 1, 183 N.E.2d 525.) The rationale underlying this rule is that the judgment debtor cannot tender the amount of the judgment, thereby halting the accrual of interest, until the amount owed is determined upon remandment. *Thatch v. Missouri Pacific R.R. Co.* (1979), 69 Ill. App. 3d 48, 386 N.E.2d 1180; *Gatto v. Walgreen Drug Co.* (1974), 23 Ill. App. 3d 628, 320 N.E.2d 222; *rev'd on other grounds* (1975), 61 Ill. 2d 513, 337 N.E.2d 23.

Toro Petroleum Corp. v. Newell (1975), 33 Ill. App. 3d 223, 338 N.E.2d 491, cited by defendant, supports this position. In that case the interest on the original judgment of $1,500 was computed from the date of its entry on February 22, 1972, to August 23, 1974, the date the amount due was increased to $20,000. Interest on $20,000 then accrued from August 23, not February. Thus, the judgment debtor was not expected to pay interest on the increased amount of the judgment until the amount due was determined. Similarly, in the instant case, interest did not accrue until the amount due was finalized on December 26, 1979.

For the foregoing reasons, the judgment of the trial court must be affirmed.

Affirmed.

STAMOS and PERLIN, JJ., concur.

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*NOTE: Respondent also refuses to file a joint income tax return with Petitioner, thereby costing her additional extra sums.

C O P Y

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

KURT ROSENBAUM, Plaintiff-Appellee	)	
vs.	)	NO.80-506
JEAN ROSENBAUM, Defendant-Appellant	)	

O R D E R

Defendant-Appellant's Petition for Rehearing is hereby denied.

(Signed) _____
Allen Hartman, Presiding Justice

(Signed) _____
John J.Stamos, Justice

(Signed) _____
Maurice Perlin, Justice

Dated: April 9, 1981

Order Entered April 9, 1981

54935

C O P Y

ILLINOIS SUPREME COURT
Clell L. Woods, Clerk
Supreme Court Building
Springfield, Ill. 62705
(217) 782-2035

October 19, 1981

Ms. Jean Rosenbaum
1354 W. Greenleaf St.
Chicago, IL 60626

No. 54935 - Kurt Rosenbaum, respondent
vs. Jean Rosenbaum, petitioner,
Leave to appeal, Appellate
Court, First District

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

(Signed) CLELL L. WOODS
Clerk of the Supreme Court

NOTE: The Illinois Supreme Court Clerk issues only letters re Orders, and not a copy of the Order itself.

C O P Y

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
County Department, Divorce Division

KURT ROSENBAUM, Plaintiff) No.71 CH 163
) Consolidated
-vs-) with
JEAN ROSENBAUM, Defendant,) No.76 CH 7448
Pro Se)

ORDER

This cause coming on to be heard this day upon Defendant's "Motion filed December 18, 1979 (Part II thereof)," and Defendant's Instanter "Amendment to Defendant's Motion Dated December 18, 1979," and Christ Marinakis not having appeared on behalf of Louis Kontopoulos, and the Court having been fully advised in the premises;

IT IS HEREBY ORDERED:

1. Jean Rosenbaum is granted leave to file the Instanter "Amendment to Defendant's Motion Dated December 18, 1979.

2. Louis Kontopoulos is order to return to Jean Rosenbaum living room drapes, certain hardware consisting of brass drapery rods, knobs, ceiling hook, etc., and whatever of her personal property remains on the premises at 2841 W. Gregory Street, Chicago, Illinois, and all mail directed to her which may be in his possession.

JUDGE CHARLES FLECK

FILED December 26, 1989

C O P Y

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
County Department, Divorce Division

KURT ROSENBAUM, Plaintiff	) Trial 71 CH 163) Consolidated) with 76 CH 7448;
v.	)(Appeal Nos. 77-991,) 77-1303, 77-1498;
JEAN ROSENBAUM, Defendant	) 77-836 Dismissed))(Formerly Appeal
Acting Pro Se	) No. 60327)

ORDER

This cause coming on to be heard on the motion of LOUIS KONTOPOULOS to vacate the order of December 26, 1979;

IT IS HEREBY ORDERED as follows:

That the Court vacates the order of December 26, 1979, as it pertains to Louis Kontopoulos, and said order is held for naught as to Louis Kontopoulos.

Entered: January 24, 1980

JUDGE CHARLES FLECK

Marinakis & Marinakis

Internal Revenue Service

230 S. Dearborn Street
Chicago, Ill. 60604

Date: 1-9-80

Jean C. Rosenbaum

This is in response to your question on Real Estate taxes. Since your (Ex)husband paid the Real Estate tax from 1966 through 1979 and it was not determined to be your tax liability until 1979 the deduction would belong to your (Ex)husband because he paid the tax. For future years since the Real Estate tax was determined by the court in 1979 to be your liability, the deduction belongs to you only if you pay the tax. If your (Ex)husband continues to pay the tax neither of you can claim the deduction. If you have any further questions please call us at 435-1040.

Sincerely yours,

Barry S. Leib
Revenue Agent

Department of the Treasury

Form 5260 (6-74) GPO 922-340

STATE OF ILLINOIS)
COUNTY OF C O O K) SS

PROOF OF SERVICE BY MAIL

I, JEAN ROSENBAUM, Petitioner, acting Pro Se, being first duly sworn upon oath, depose and state I served the foregoing document entitled ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, First District, with Appendix, by mailing three copies to Kurt Rosenbaum, 1200 East 53rd Street, Chicago, Illinois 60615, and three copies to Christ Marinakis, 77 West Washington Street, Chicago, Illinois 60602, and depositing the envelopes in the United States Mail at the Main Post Office, Canal & Van Buren Streets, Chicago, Illinois, before 4:00 PM on January 15, 1982, with proper, first-class postage prepaid.

I further state that all parties

required to be served with this document have been served.

Dated: _____

_____
JEAN ROSENBAUM, Petitioner,*
acting Pro Se

I, _____, a Notary Public for and in the State and County aforesaid, do hereby certify that the foregoing document was sworn and subscribed to before me by Jean Rosenbaum this 15th day of January, 1982.

_____
Notary Public

My commission expires _____

*See copy marked "Notarized Copy" for signatures.

Jean Rosenbaum, Petitioner, acting Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)